

## REMARKS

Claims 11-20 remain pending in this application. None of the claims were amended in this response. Favorable reconsideration is respectfully requested.

Claims 11, 14 and 16-20 were rejected under 35 U.S.C. §102(e) as being anticipated by Beckman et al (US Pub. 2004/0209638). Claims 12-13 were rejected under 35 U.S.C. §103(a) as being unpatentable over Beckman et al (US Pub. 2004/0209638) in view of Speight (US Pub. 2003/0069020). Applicant respectfully traverses these rejections, as Beckmann is not prior art to the present application.

MPEP 2136.03 provides in part:

35 U.S.C. 102(e) is explicitly limited to certain references "filed in the United States before the invention thereof by the applicant" (emphasis added). Foreign applications' filing dates that are claimed (via 35 U.S.C. 119(a) - (d), (f) or 365(a)) in applications, which have been published as U.S. or WIPO application publications or patented in the U.S., may not be used as 35 U.S.C. 102(e) dates for prior art purposes. This includes international filing dates claimed as foreign priority dates under 35 U.S.C. 365(a). Therefore, the foreign priority date of the reference under 35 U.S.C. 119(a)-(d) (f), and 365(a) cannot be used to antedate the application filing date.

Furthermore,


[T]he international filing date [of a PCT application] is a U.S. filing date for prior art purposes under 35 U.S.C. 102(e). If such an international application properly claims benefit to an earlier-filed U.S. or international application, or priority to an earlier-filed U.S. provisional application, apply the reference under 35 U.S.C. 102(e) as of the earlier filing date, assuming all the conditions of 35 U.S.C. 102(e) and 35 U.S.C. 119(e), 120, or 365(c) are met.

In the present case, the cited Beckmann reference has a PCT filing date of July 9, 2002. The present application claims priority to DE 10229056.3, which was filed on June 28, 2002. Thus, the present application predates Beckmann's PCT date, and Beckmann's German filing (DE 10154428) may not be considered for prior art purposes under 102(e). Thus, all the pending rejections are improper and should be withdrawn.

An early Notice of Allowance is earnestly requested. If any fees are due in connection with this application as a whole, the Examiner is authorized to deduct such fees from deposit

account no. 02-1818. If such a deduction is made, please indicate the attorney docket number (112740-1040) on the account statement.

Respectfully submitted,  
BELL, BOYD & LLOYD LLC

BY   
Peter Zura  
Reg. No. 48,196  
Customer No.: 29177  
Phone: (312) 807-4208

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